IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7629 of 1999

with

SPECIAL CIVIL APPLICATION No 7630 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SIKANDAR M RATHOD

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 7629 of 1999
   MR TR MISHRA for Petitioner No. 1
   MR AD OZA for Respondent No. 1-2
2. Special Civil Application No. 7630 of 1999
   MR TR MISHRA for Petitioner No. 1
   MR AD OZA for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/06/2002

COMMON ORAL JUDGEMENT

#. Since common point is involved in both these petitions, the same are being disposed of by this common order.

#. Both the petitioners were appointed as Helper and the employment was offered to them as they are in the category of land-losers. At the time of appointment, particular birth dates were recorded in the service record. The said birth dates were recorded on the basis of Civil Surgeon's certificates submitted by the petitioners of these petitions.

#. So far as Special Civil Application No.7629 of 1999 is concerned, by the impugned order dated 12.8.1999 which is at page 11 - Annexure-A, it was ordered that, he should be treated to have retired from service with effect from 18.8.1999 and that he stands relieved from service from that date after office hours. So far as Special Civil Application No.7630 of 1999 is concerned, the petitioner of that petition was served with the show cause notice on 30.7.1999 to the effect that, at the time of getting the employment, his birth date was mentioned as 20.7.1947 and that he has submitted the document also to that effect. However, on further verification through the Mamlatdar, Thasra, it is found that, his birth date is 15.5.1932 and that accordingly, he is about 67 years, 2 months and 15 days of age and that since he has completed 60 years of age on 14.5.1992, he was asked to show cause as to why, he should not be dismissed from service from the aforesaid date. It seems that the petitioner of that petition, gave consent for the purpose of retiring him from the aforesaid date, i.e. from 14.5.1992. Thereafter, by order dated 3.7.1999 the said petitioner was informed by the Chief Engineer that the petitioner stands relieved from service of the GEB with effect from 31.7.1999 after office hours. The said order is produced at page 14. It is interesting to note that, thereafter, the petitioner has been given certificate, letter of appreciation (Sanman Patra) which is at page 19 wherein it is mentioned that the petitioner retired after 21 and 1/2 years of service i.e. with effect from 31.7.1999 and as a token of gesture, he has been given a letter of appreciation with good wishes. It is, therefore, clear that, so far as petitioner of Special Civil Application No.7630 of 1999 is concerned, he was allowed to be retired on and from 31.7.1999. It is interesting to note that, prior to that, the said petitioner has already informed the board that, birth date pointed out by the department i.e. 15.5.1932 is

correct and that he has no objection if he is allowed to be retired on the basis of the aforesaid date. That letter is at page 18. It is not in dispute that the age of superannuation is 60 years and on that basis, the said petitioner was required to be relieved by way of superannuation with effect from 31.5.1992. Instead, his services were continued upto 31.7.1999 and as stated earlier, he was allowed to retire on and from 31.7.1999 as per the office order which is at page 14 - Annexure-B. Subsequently, by office order dated 16.8.1999, the petitioner was informed that, no increments were required to be allowed in favour of the petitioner after 31.5.1992 as after the aforesaid date, the petitioner can be said to be in unauthorised service, and therefore, the department wanted to recover the amount of increments which was released in favour of the petitioner between 1992 and 1999. At that stage, the petitioner approached this Court by filing this petition.

#. Initially, this Court has stayed the order of recovery. So far as Special Civil Application No.7629 of 1999 is concerned, the grievance of the petitioner is that since he was allowed to serve upto 12.8.1999, the department cannot recover any amount of salary as even on the basis of quantum meruit, he was entitled to have salary upto the period upto which he has served in the department. So far as subsequent petition, i.e. Special Civil Application No.7630 of 1999, is concerned, the grievance of the petitioner is that, since he had already retired from service with effect from 31.7.1999, it is not proper on the part of the department now to recover the amount of increments which is already paid to him especially when the department has not held any departmental inquiry, nor even the punishment order is passed. On the contrary, as stated earlier, he was given the letter of appreciation and his services were appreciated, as indicated earlier. It is submitted by Mr.Mishra that the petitioners have no objection if they are paid their retiral dues as per the rules, however, they may be treated to have been superannuated as per the birth dates which are found to be correct by the GEB on the basis of the report of the Mamlatdar. He further states that, accordingly, the petitioners may be paid their retiral dues considering their dates of retirement as 11.8.1990 so far as Special Civil Application No.7629 of 1999 is concerned and as 14.5.1992 so far as Special Civil Application No.7630 of 1999 is concerned. It is further submitted that, since the department had allowed the petitioners to continue upto the year 1999, the amount of salary, which was paid to the petitioners, may not be recovered by the department. Similarly, the

department should be restrained from recovering any amount which is paid at the time of releasing the increments.

#. I have heard Mr.Mishra, for the petitioners and Mr.Oza for the respondent - Board.

#. It is not in dispute that, in none of the aforesaid cases, any inquiry was held against the petitioners. Not only that, the department has voluntarily allowed the petitioners to retire from service. Both these petitioners have served upto 1999. It is not even the case of the department that the petitioners have committed any fraud at the time of giving particular birth date at the time of getting the employment. Even the orders, by which the petitioners are allowed to retire, do not indicate the aforesaid fact in any manner. On the contrary, as stated earlier, the petitioner of Special Civil Application No.7630 of 1999 was, even, given the letter of appreciation at the time of his retirement. In my view, therefore, since both the petitioners have served the department upto 1999, naturally, on the basis of the quantum meruit, they are entitled to receive the salary. In any case, now it is not open for the department to recover the aforesaid amount. Under these circumstances, the department is restrained from recovering any amount from the petitioners towards the salary which is paid to them or towards increments which were already released at the relevant time. It is further clarified that, they will be entitled to the retiral dues till completion of 60 years of age and completion of 60 years is to be treated as per the report of the Mamlatdar which is accepted by the department. Under the circumstances, the respondent board is restrained from recovering any amount from the petitioners which is paid to them towards the salary or increments as the case may be and in short, the board is restrained from effecting recovery of any amount from the present petitioners.

#. Accordingly, both the petitions are partly allowed. Whatever retiral dues which are required to be paid to the petitioners, as indicated earlier, may be paid within a period of one month from the date of receipt of the writ of this Court. Rule is made absolute in each of the petitions to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J)
(pathan)